Supreme Court, U.S.
FILED
JUL 30 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO. 86-65

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

RICHARD J. McDONALD, Petitioner,

v.

ROSCOE L. EGGER JR., Commissioner of the Department of Internal Revenue; and
LOCKHEED CORPORATION (AKA)
Lockheed California Company
Respondents

SUPPLEMENTAL APPENDIX

RICHARD J. McDONALD
6754 Clybourn #204
North Hollywood, Ca. 91606
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IN PROPRIA PERSONA

APPENDIX E

Case NO. 85-0702 AHS (Mcx)

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RICHARD J. McDONALD Plaintiff v. ROSCOE EGGER JR., Commissioner of Internal Revenue Service and LOCKHEED Corporation, aka Lockheed California Company Defendents	ORDER DISMISSING COMPLAINT FOR WANT OF SUBJECT MATTER JURISDICTION AND DENYING DEFENDENT'S REQUESTS FOR ATTORNEY'S FEES OR OTHER SANCTIONS

Cn January 30, 1985 Richard McDonald Filed a complaint against Roscoe Egger Junior, as Commissioner of the Internal Revenue Service, and Lockheed Corporation ("Lockheed"), alleging a civil conspiracy to defraud McDonald and to deprive him of various of his constitutional rights in connection with collection of federal income tax from his wages. Defendent Lockheed moved on February 20, 1985 to dismiss the

complaint for want of subject matter jurisdiction and for failure to state a claim, pursuant to Rule 12(b)(1) and (6), Fed.R.Civ.P. On March 5, 1985, defendent Egger moved on similar grounds to dismiss the complaint. Each defendent also requested sanctions for plaintiff's alleged filing of a frivolous claim. The motions were set for hearing by the Court on its April 8, 1985 calendar. After reading and considering the papers submitted in support of and in opposition to the motions, the Court finds this case to be appropriate for decision without oral argument (see Local Rule 7.11) and hereby grants both motions to dismiss and denies defendent's requests for attorney's fees or other sanctions.

Plaintiff asks this Court to grant him exemption from further participation in the federal income tax system,

including "[g]ranting Plaintiff withdrawal as a right, from the Social Security System", and "[o]rdering the Internal Revenue Service to issue a written instrument stating that Plaintiff is not subject to, nor under the jurisdiction of the Internal Revenue Code by virtue of the Public Salary Tax Act." See Complaint, prayer ¶¶1-7. This the Court cannot do. Title 26 U.S.C. §7421(a) prohibits taxpayers from bringing a "suit for the purpose of restraining the assessment or collection of any tax...." This section is strictily enforced. Maxfield v. United States Postal Service, 752 F.2d 433, 434 (9th Cir. 1984). An exception to the strict rule of §7421(a) is made only where the taxpayer can show that (1) under no circumstances can the government ultimately prevail, and (2) the taxpayer will be irreparably harmed

if the injunction is not granted. Enochs v. Williams Packing & Navigation Co., 370 U.S. 1, 7 (1962). Plaintiff clearly has not satisfied the first prong of this test. His sole grounds for requesting relief is that his participation in the income tax system is coerced, and that the system is unconstitutional. These claims are frivolous. Maxfield, 752 F.2d. at 434; Edwards v. Commissioner, 680 F.2d 1268, 1270 (9th Cir. 1982).

To the extent that the complaint can be read as a suit for refund (see Complaint, prayer, ¶5), it is similarly barred. Title 26 U.S.C. §7422(a) provides:

> No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax to have been erroneously or illegally assessed or collected...

> until a claim for refund or credit has been duly filed with the Secretary [of the Internal Revenue Service]...

Compliance with this statute is a jurisdictional prerequisite to a refund action. Bear Valley Mutual WAter Co. v. Riddell, 493 F.2d 948, 951 (9th Cir. 1974). In this case, there has been no claim for refund filed with the Secretary and there is consequently no jurisdiction in this court.

Plaintiff's action against defendent Lockheed for withholding his wages is also barred. Lockheed had no discretion but to follow I.R.S. directives under U.S.C. §3402 in withholding taxes from plaintiff's pay. Maxfield, 752 F.2d at 434. Lockheed is immune from suit for its compliance. Id.; 26 U.S.C. §3403.

Defendents' requests for attorney's fees or other sanctions are denied.

Although Lockheed asserts that it has repeatedly been forced to defend frivolous lawsuits brought by plaintiff, Lockheed has failed to proffer any evidence of a prior action. See Decl. of Edward B. Reitkopp, at ¶3 (no "Exhibit 'A'".

IT IS SO ORDERED

IT IS FURTHER ORDERED that the Clerk shall serve, by United States mail, a copy of this Order on all parties or their counsel in this action.

Dated: April 3, 1985

/s/Alicemarie H. Stotler
Alicemarie H. Stotler
United States District Judge

APPENDIX F

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Commissioner of Internal Revenue
and LOCKHEED CORPORATION
Respondents

CERTIFICATE OF SERVICE

I, Richard J. McDonald, the petitioner in this cause, certify:

That I have served three (3) copies of the Supplemental Appendix on counsels for the respondents by depositing same in a United States Post Office mail box at North Hollywood, California, 91606, on 28th day of July 1986, with first class postage prepaid and with the envelope

addressed as follows:

Glenn L. Archer
Michael L. Paup
U.S. Attorney's Office
U.S. Department of Justice
Tax Division
Washington, D.C. 20530

Benjamin George Williams, Esq.
Paul A. Silver, Esq.
Amy B. Lawrence, Esq.
10880 Wilshire Blvd. Suite 1900
Los Angeles, Ca. 90024-4173

The Solicitor General
Department of Justice
Washington, D.C. 20530

(2) The above named parties are the only parties required to be served.

(3) I further state to the best of my knowledge that the court's copies of these documents were enclosed in an package, properly addressed to the Clerk of this Court, and that said package was deposited in the United States Mail at North Hollywood, California, with first class postage prepaid on the 28th day of July, 1986, which is within the permitted

time of filing.

Richard J. McDonald
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91606